IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2)(b)

Description of the Case.

A.O. No. 538 of 2001
New India Assurance Company

Vs
Virendra Singh and others.

Approved for reporting.

_____

Not approved for reporting

Date of decision :- 17.6.2004.

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 538 of 2001
(Old No. 257/1986)

New India Assurance Co. Ltd. …….. Appellant

Versus

Virendra Singh & others …… Respondents

Mr. T.A. Khan, learned counsel for the appellant.
Ms. Seema Sirohi, learned counsel for the claimant/respondent.

Hon. Rajesh Tandon, J.

Heard Mr. T.A. Khan, learned counsel for the appellant and Ms. Seema Sirohi, learned counsel for the claimant / respondent.

The present appeal from order has been filed by the appellant namely, New India Assurance Co. Ltd. against the judgment and award dated 29.11.1985 passed by Additional District Judge / Motor Accident Claims Tribunal, Dehradun in Accident Claims Tribunal Case No. 183 of 1979 whereby the Claims Tribunal allowed the claim petition of the claimant against the Assurance Company and awarded Rs.50,000/- as compensation along with interest at the rate of 10% per annum till the actual date of payment.

Brief facts of the case giving rise to the present appeal are that on 23.06.1979 the passenger bus No.UTL 3805 was coming from Ghanghora towards Dehradun. The bus was being driven negligently and rashly with very high speed by its driver. While negotiating a sharp turn the driver of the bus lost control over the bus and the bus rolled down into a khud resulting into the death of the wife of the respondent No. 1. The age of the deceased was about 29 years at the time of her death.

According to Sardar Jasbir Singh, opposite party No. 3, the driver of the bus had to negotiate the blind curve after passing through Birpur gate No. 2 and the driver was coming downward slowly blowing the horn, but all of a sudden a cyclist appeared from the opposite directing. In order to avoid the cyclist from collusion the driver took the bus to the extreme left of the road as a result the bus hit the parapet wall and rolled down into the khud. It was because of unforeseen circumstances in which the driver could not help. It was also alleged during the trial that Sri Watan Singh was the real owner of the bus in question at the time of accident and as such no liability can be fastened upon Sardar Jasbir Singh.

O.P. No. 4, Sri Surender Singh, driver of the bus at the time of accident pleaded that the accident had occurred as the things went beyond his control. According to him, while negotiating the blind curve after passing through Birpur gate he swerved the bus to the extreme left in order to save a cyclist coming from the opposite direction. In his bid to avert the accident the bus dashed against the parapet wall and rolled down into the river and as such there is no negligence on his part.

M/s New India Assurance Company took its defence case on the same lines as laid above.

The following issues were framed for trial of the case:

1) Whether the accident resulting in death of Smt. Laxmi was caused by rash and negligent act of the O.P. No. 4?
2) Whether O.P. NO. 4 was driving the vehicle without a valid license? If so, its effect?
3) To what amount of compensation, if any, are The claimants entitled?

With regard to issue No. 1 the finding recorded by the M.A.C.T. is that one Smt. Anita (P.W. – 2) was also traveling in the bus with the deceased Smt. Laxmi, wife of the Shri Virendra Singh. Smt. Anita testified that she and Smt. Laxmi both purchased the tickets from Ghanghora from where they boarded the bus. She added further that the bus had to stop at Birpur, but did not stop at the Birpur gate or the driver had blown horn on the blind curve, negotiating which the bus had gone into the khud. She has also stated that the travelers were shouting for the bus to stop, but it all fell on the deaf ears of the driver. Smt. Anita also sustained the injuries and she was hospitalized in Military Hospital. During her cross examination she stated that Birpur gate is a halting place for the bus and there is a sharp bend after passing the gate while coming downward. This bend is at a distance of 10 paces from the gate. Smt. Anita refuted the suggestion that the bus stopped at the Birpur gate which is contradictory to the defence case of the opposite parties. Naturally, if the bus had stopped at the gate, it could not have picked up high speed within 100 paces starting from the gate-point. Smt. Anita asserted that the driver was driving the bus with a high sped despite that the passengers were shouting at him to stop or slow down the speed, but the driver did not pay any heed. She has also stated that when the bus started rolling down the driver jumped out of the bus and the bus fell down into the khud. She has also stated that the deceased Smt. Laxmi was sitting on his side and they were occupying their seats in the centre of the bus. The evidence of Smt. Anita Gupta remains unshaky. She is a natural and probable witness of the accident. She has no bias or prejudice in the matte under consideration, therefore, her evidence is fully trustworthy.

With regard to issue No. 2 the finding recorded by the M.A.C.T. is that the burden to prove to this issue lay upon the New India Assurance Company. The Assurance Company had not examined even a single witness to prove that the driver of the bus was not holding a valid license. The driver Shri Surendra Singh appeared in the witness box as D.W. – 1. he has testified in unequivocal terms that he was carrying on the profession of the driver from the year 1977 and on 23.06.1979 i.e. the date of the accident he was holding a valid license to drive the bus. This statement of the driver remains unchallenged and uncontroverted. Therefore, it is undoubtedly true that the driver was holding a valid license on the date of accident. The Assurance Company, therefore, cannot be absolved of its liability under the insurance police of the bus in question.

With regard to issue No. 3 the finding recorded by the M.A.C.T. is that Shri Virendra Singh, the husband of the deceased Smt. Laxmi testified that she was survived by three small children, namely Km. Vinita, Master Neeraj Kumar and Km. Rakhi. They are of 10, 7 and 2 years of age respectively. As stated by Shri Virendra Singh his wife used to do the entire house hold work including looking after the family affairs and cooking the meals for the family. There can be no denying of the fact that after the death of his wife, Sri Virendra Singh has to engage a servant who can cook meals and also a house maid (Aya) who can brought up the minor children. Considering all these facts and circumstances, it is held that Shri Virendra Singh and his small children have been deprived of the services of Smt. Laxmi which can be assessed at the rate of Rs. 200/- per month. Smt. Laxmi Devi was 29 years old at the time of her death. Relying upon the general principles of longevity, it can be considered that Smt. Laxmi would have lived upto the age of 60

years had the accident not taken place. That way, Shri Virendra Singh can be said to be deprived of her services for a period of 31 years. Calculating accordingly, the total loss to him would emerged to Rs.74,400/-. If an amount of Rs.14,880/- is deducted at the rate of 20% for payment in one lump sum, he is entitled to get Rs.59,520/-. Each children of the deceased is also entitled to get Rs.1,500/- for loss of motherly love and affection.

It was argued on behalf of Sri Jasbir Singh that no liability can be fastened upon him as Watan Singh was the real owner of the bus in question. The contention is baseless in view of his own statement. Shri Jasbir Singh, opposite party No. 3, stated that he was the real owner of this bus and he had given it to Watan Singh for playing on the hill route. In Para 6 of this evidence, it was admitted by Shri Jasbir Singh that since the permit to ply this but was in his name, the insurance of the bus had also been conducted in his own name. He did not deny the fact that the affixed his signatures as proprietor of the bus in the application form prescribed for insurance of the vehicle. Subsequently, he admitted that he signed as proprietor of the bus on the application form for insurance. In registration certificate (paper No. 85-C) also the name of Shri Jasbir Singh has been mentioned as co-owner of the bus. In this certificate Shri Watan Singh is mentioned as one of the two co-owners, but this does not absolve Sri Jasbir Singh from his liability to pay compensation in this case as admitted he was the proprietor of the bus. Registration certificate is not the title deed instead it merely authorizes the persons mentioned there in to run the bus. When Shri Jabir Singh was the proprietor of the bus and he alone held the road permit to ply it, he is to be held legally liable to pay the compensation. I therefore, reject his contention that he does

not owe any liability for payment of compensation to the respondent – claimant.

Keeping in view all the facts and circumstances of the case, the compensation awarded by the Motor Accident Claims Tribunal is fully justified. I do not find any infirmity or illegality in the order passed by the Claims Tribunal.

In view of this, the appeal is devoid of any merit and is, hereby, dismissed. No order as to costs.

(Rajesh Tandon, J.)

Dt. 17th June, 2004
HN